

PATENT

**IN THE UNITED STATE PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of:	:	Carel J.L. Van Driel
	:	
For:	:	COMMUNICATIONS NETWORK USING
	:	DIFFERENT TRANSMISSION
	:	PROPERTIES
	:	
Serial No.	:	10/780,473
	:	
Filed	:	February 17, 2004
	:	
Art Unit	:	2616
	:	
Examiner	:	Jain, Raj K.
	:	
Attorney Docket No.	:	PHN16-613A
	:	
Confirmation No.	:	1391

SUPPLEMENTAL APPEAL BRIEF

Mail Stop Appeal Brief Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed June 1, 2006, further to the Appeal Brief filed July 10, 2006, and in response to the Notification mailed August 3, 2006.

I REAL PARTY IN INTEREST

The party in interest is the assignee, Koninklijke Philips Electronics, N.V. The assignment document is recorded at Reel 014993 and Frame 0473.

II. RELATED APPEALS AND INTERFERENCES

Following are identified any prior or pending appeals, interferences or judicial proceedings, known to Appellant, Appellant's representative, or the Assignee, that may be related to, or which will directly affect or be directly affected by or have a bearing upon the Board's decision in the pending appeal:

There are no related appeals and interferences.

III. STATUS OF CLAIMS

This is an appeal from the final rejection dated April 3, 2006 of claims 11-16. No other claims are pending. No claims are allowed. Claims 1-10 are cancelled.

IV. STATUS OF AMENDMENTS

All Amendments filed in this application has been entered. A correct copy of appealed claims 11-16, including all entered amendments thereto, appears in the attached Appendix.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A concise explanation of the subject matter recited in each independent claim on appeal, with citations referring to page and line number of the specification and Figure numbers and reference characters, is as follows.

Claim 11 pertains to a communication network (Fig. 1) with a plurality of secondary nodes (NT) being coupled to at least one primary node (NCN 3,12,15). This is shown in greater detail in Fig. 2 which depicts the secondary nodes (NT) including a transmitter for transmitting packets to the primary node (e.g. NCN 12) according to predetermined transmission properties, and a first address translator 6 for translating initial address information carried by packets received from at least one terminal device (e.g. 34, 36, 38, 46, 48) into address information carrying information about: (a) the predetermined transmission properties to be used for transmitting the associated packets, and (b) a destination node 12, the communication network further comprising a second address translator 10 for translating the address information back into the initial address information. See page 3, line 23 to page 5, line 34.

Claim 15 pertains to a destination node 12 for communication in a communication system having a plurality of source nodes (e.g. 46, 48) arranged for transmitting of packets containing initial address information whereby a source node (e.g. 46, 48) that is sending a packet performs a first address translation providing information within the packet header designating the address of the destination node, the destination node 12 arranged to perform a second address translation, translating the address of the destination node 12 back into the initial address information. See page 6, line 20 to page 7, line 31.

Claim 16 pertains to a communication method comprising transmitting packets according to predetermined transmission properties, translating initial address information carried by packets received from at least one terminal device into address information carrying information

about the transmission properties to be used for transmission of the packets (Fig. 3; page 6, lines 1 to 19), and translating said address information back into the initial address information at a destination node (Fig. 5; page 7, line 32 to page 8, line 22).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 11 and 13-16 are rejected as allegedly being anticipated under 35 U.S.C. § 102(e) by U.S. Patent Number 6,026,086 to Lancelot.
2. Claim 12 is rejected as allegedly being unpatentable under 35 U.S.C. § 103(a) over Lancelot in view of U.S. Patent Number 5,802,063 to Deiss.

VII. ARGUMENT

1. 35 U.S.C. § 102(e)

The Office Action rejects claims 11 and 13-16 under 35 U.S.C. § 102(e) as allegedly being anticipated by Lancelot. Applicant respectfully requests that this rejection be reversed because Lancelot does not disclose the subject matter according to the combinations recited in claims 11 and 13-16.

Lancelot discloses a circuit switched network interface for communication of a circuit switched network protocol signal; a packet-based network interface for communication of a packet-based network protocol signal; and a transceiver for the transmission and reception of a first protocol signal. A communications controller is coupled to the circuit switched network

interface, the packet-based network interface and the transceiver. The communications controller, through a set of program instructions and an inter-working function, inter-converts the first protocol signal with the circuit switched network protocol signal and inter-converts the first protocol signal with the packet-based network protocol signal. Lancelot's network has a primary node for translating data into a form suitable for transmission over a packet-based network, or over a circuit-based network. Lancelot's network also has a secondary node which transmits data to the primary node using a defined protocol, such as CACS (See Abstract, Col. 3, lines 45-60).

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if Lancelot does not disclose each and every element according to the combinations recited in the rejected claims, then Lancelot fails to anticipate the rejected claims. In that instance, the subject matter recited in the rejected claims is patentably distinct from Lancelot.

Claim 11 recites a communication network including "secondary nodes comprising a

transmitter for transmitting packets according to predetermined transmission properties; and a first address translator for translating initial address information carried by packets ... into address information carrying information about ... the predetermined transmission properties to be used for transmitting the associated packets." Appellant respectfully asserts that Lancelot fails to disclose the translation of address information into information about the transmission properties to be used for transmission. Specifically, Lancelot fails to disclose the translation of initial address information carried by packets into information about the transmission properties to be used for transmitting the associated packets by a secondary node.

The primary nodes disclosed in Lancelot are able to transmit according to different transmission properties, i.e., packet-based vs. circuit-based. See col. 3, lines 45-67. However, Lancelot does not disclose that the secondary node is able to transmit according to predetermined transmission properties included within initial address information of packets. Accordingly, Lancelot does not disclose all of the subject matter according to the combinations recited in claim 11.

For at least the foregoing reasons, Applicant respectfully submits that claim 11 is allowable. Claims 13-14 depend upon allowable claim 11 and are also allowable at least by virtue of their dependency therefrom. Therefore, Appellant respectfully requests that the Board reverse the rejection of claims 11, 13, and 14 as being allegedly anticipated by Lancelot.

Claim 15 recites a "destination node for communication in a communication system having a plurality of source nodes arranged for transmitting of packets containing initial address information..., the destination node arranged to perform a second address translation, translating

the address of the destination node back into the initial address information.” Lancelot does not disclose translating the address of the destination node back into the initial address information. Lancelot provides reverse address resolution protocol (RARP) functionality, for the primary station (destination node) to determine whether a packet from a first secondary station is destined for another, second secondary station. However, Reverse Address Resolution Protocol (RARP) is a protocol used to resolve an IP address from a given hardware address. The primary station also translates IP addresses into hardware addresses of secondary stations. See col. 11, lines 20-30. Thus, the primary station merely translates IP addresses into hardware addresses, and vice versa.

Accordingly, Lancelot does not disclose all of the subject matter according to the combination recited in claim 15. Thus, for at least the foregoing reasons, Applicant respectfully requests that the Board reverse the rejection of claim 15 as allegedly being anticipated by Lancelot.

Claim 16 recites a “communication method comprising ... translating initial address information carried by packets received from at least one terminal device into address information carrying information about the transmission properties to be used for transmission of the packets.” Lancelot does not disclose the translation of address information from a terminal device into information about transmission properties. More specifically, Lancelot does not disclose the translation of initial address information carried by packets into information about the transmission properties to be used for transmitting the associated packets.

Thus, Applicant respectfully asserts that Lancelot does not disclose the subject matter according to the combination recited in claim 16. For at least the foregoing reasons, Applicant respectfully requests that the Board reverse the rejection of claim 16 as allegedly being anticipated by Lancelot.

2. 35 U.S.C. § 103(a)

Claim 12 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lancelot in view of Deiss. The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Therefore, if the above-identified criteria are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

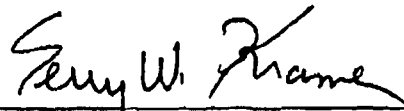
As detailed above in connection with the rejection of claim 11 under 35 U.S.C. § 102(e) as allegedly being anticipated by Lancelot, Applicant respectfully submits that claim 11 is not anticipated by Lancelot. Additionally, Applicant respectfully submits that Deiss fails to overcome the deficiencies in Lancelot described above in connection with the rejection of claim 11. Thus, Applicant respectfully submits that the Official Action correctly did not rely upon Deiss to make up for the deficiencies in Lancelot described above.

For at least the foregoing reasons, claim 12, which depends from claim 11, is allowable at least by virtue of its dependency therefrom. Thus, Applicant respectfully requests that the Board reverse the rejection of claim 12 as being unpatentable over Lancelot in view of Deiss.

3. Conclusion

For at least all of the reasons discussed above, Applicant respectfully submits that the rejections are in error and that claims 11-16 are in condition for allowance. Thus, for at least all of the above reasons, Appellant respectfully requests that this Honorable Board reverse the rejections of claims 11-16.

Respectfully submitted,
KRAMER & AMADO, P.C.



Terry W. Kramer
Reg. No. 41,541

DATE: September 5, 2006

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VIII. CLAIMS APPENDIX

CLAIMS INVOLVED IN THE APPEAL:

11. Communication network comprising a plurality of secondary nodes being coupled to at least one primary node,
the secondary nodes comprising:
a transmitter for transmitting packets to the primary node according to predetermined transmission properties; and
a first address translator for translating initial address information carried by packets received from at least one terminal device into address information carrying information about:
(a) the predetermined transmission properties to be used for transmitting the associated packets, and
(b) a destination node;
the communication network further comprising a second address translator for translating the address information back into the initial address information.
12. A communication network as claimed in Claim 11, comprising a selector for selecting packets according to address information in their header, the transmitter transmitting the packets with the transmission properties dependent on the selection performed by the selector.

13. A communication network as claimed in Claim 11, wherein the primary node comprises the second address translator.

14. A communication network as claimed in Claim 11, the communication network comprising a cross connect for passing packets from the secondary nodes to an outside network, wherein the second address translator is arranged for translating the address information before the packets are applied to the cross connect.

15. A destination node for communication in a communication system having a plurality of source nodes arranged for transmitting of packets containing initial address information whereby a source node that is sending a packet performs a first address translation providing information within the packet header designating the address of the destination node, the destination node arranged to perform a second address translation, translating the address of the destination node back into the initial address information.

16. A communication method comprising transmitting packets according to predetermined transmission properties, translating initial address information carried by packets received from at least one terminal device into address information carrying information about the transmission properties to be used for transmission of the packets, and translating said address information back into the initial address information at a destination node.

Application No: 10/780,473
Attorney's Docket No: PHN16-613A

IX. EVIDENCE APPENDIX

A copy of the following evidence 1) entered by the Examiner, including a statement setting forth where in the record the evidence was entered by the Examiner, 2) relied upon by the Appellant in the appeal, and/or 3) relied upon by the Examiner as to the grounds of rejection to be reviewed on appeal, is attached:

NONE.

Application No: 10/780,473
Attorney's Docket No: PHN16-613A

X. RELATED PROCEEDINGS APPENDIX

Copies of relevant decisions in prior or pending appeals, interferences or judicial proceedings, known to Appellant, Appellant's representative, or the Assignee, that may be related to, or which will directly affect or be directly affected by or have a bearing upon the Board's decision in the pending appeal are attached:

NONE

EXHIBIT C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : VAN DRIEL, Carel J.L.
Serial No. : 10/780,473
Filed : 02/17/2004
Atty. Docket : N 016613A
Group Art Unit : 2616
Examiner : JAIN, Raj K.
Conf. No. : 1391

Attention: Paul Shanowski, Senior Attorney
Commissioner for Patents
Mail Stop Petition
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION

Sir:

I, Moria Anderson, was working as a Patent Secretary at the law firm of Kramer & Amado, P.C. on September 5, 2006. I hereby attest that I personally facsimile transmitted a supplemental appeal brief, in response to the Notification of Non-Compliant Appeal Brief of August 3, 2006, to the USPTO on September 5, 2006, and received an auto-reply facsimile transmission from the USPTO acknowledging receipt of this transmission. Copies of the paper and the auto-reply are attached.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: April 24, 2007
April 24, 2007

Moria Anderson
Moria Anderson

EXHIBIT D

TO: Auto-reply fax to 703 5198802 COMPANY:

Auto-Reply Facsimile Transmission



TO: Fax Sender at 703 5198802

Fax Information

Date Received:

9/5/2006 3:56:17 PM [Eastern Daylight Time]

Total Pages:

16 (including cover page)

ADVISORY: This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.8(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

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SEP-05-2006 15:35	KRAMER & AMADO, P.C.	703 5198802 P.01
		
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FROM:	Terry W. Kramers KRAMER & AMADO, P.C.	
DATE:	September 5, 2006	
SUBJECT:	U.S. Patent Application Title: COMMUNICATIONS NETWORK USING DIFFERENT TRANSMISSION PROPERTIES Serial No.: 10/710,673 Attorney Docket No.: F2004-4134	
PAGES:	INCLUDING COVER PAGE (16)	
<small>THIS INFORMATION CONTAINED HEREIN is intended only for the exclusive use of the individual or entity named above. This document may contain information that is patented, confidential, or otherwise exempt from disclosure under applicable law. If the recipient of this information is NOT the intended addressee, you are hereby notified that any dissemination, distribution, copying or use of this information in any way is strictly prohibited. If you have received this communication in error, please call or immediately notify the sender to delete this information from its files and destroy this document.</small>		
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In the event that the fees submitted herewith are insufficient, please charge any remaining balance, or credit any overpayment, to our Deposit Account Number 50-0578.		
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EXHIBIT E



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APR 02 2007

OFFICE OF PETITIONS

In re Application of :
Carel J. L. Van Driel :
Application No. 10/780,473 :
Filed: February 17, 2004 : DECISION ON PETITION
Attorney Docket No. PHN 16-613A : UNDER 37 C.F.R. §1.181(A)
Title: COMMUNICATION NETWORK :
USING DIFFERENT TRANSMISSION :
PROPERTIES :

This is a decision on the petition pursuant to 37 C.F.R.
§1.181(a), filed on January 3, 2007.

BACKGROUND

The above-identified application became abandoned for failure to reply in a timely manner to the Notification of Non-Compliant Appeal Brief, mailed August 3, 2006, which set a period for reply of one month. No response was received, and no extensions of time were requested. Accordingly, the above-identified application became abandoned on September 4, 2006. A notice of abandonment was mailed on October 12, 2006.

RELEVANT PORTION OF THE C.F.R.

37 C.F.R. §1.8(b) sets forth, in toto:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the

proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

ANALYSIS

The showing in the present petition is not sufficient to withdraw the holding of abandonment. Petitioner has asserted that a response to this communication was submitted on September 5, 2006 (September 4, 2006 fell on a federal holiday). The electronic file has been reviewed, and the response which was purportedly submitted on September 5, 2006 has not been located.

Petitioner has submitted a copy of this response, and it is noted that it contains a certificate of facsimile transmission dated September 5, 2006. Certificate of facsimile transmission practice provides a mechanism by which Applicants may evince that a paper was timely submitted to the Office, in the event that the correspondence is not received.

Petitioner's submission has been reviewed: with the present petition, Petitioner has informed the Office of the previous mailing and provided an additional copy of the previously submitted correspondence. However, it is noted that the certificate of mailing was executed by one Moira Anderson, and it does not appear that Petitioner has included a statement from this individual. 37 C.F.R. §1.8(b)(3) requires the inclusion of a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission.

Petitioner has included a statement from Mark Woodall (it appears that Ms. Anderson is his administrative assistant), however it does not appear that he has firsthand knowledge of the relevant transmission - it is noted that Mr. Woodall has not set forth that he witnessed the sending of this communication. On renewed petition, Petitioner may wish to include a statement from Ms. Anderson.

CONCLUSION

Pursuant to the discussion above, the submission is incomplete. It follows that the present petition pursuant to 37 C.F.R. §1.181 must be DISMISSED.

Any reply must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.181." This is not a final agency action within the meaning of 5 U.S.C 704.

Alternatively, Petitioner may wish to consider filing a petition under 37 C.F.R. §§1.137(a) and/or (b).

Any subsequent petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanowski, and may be submitted by mail¹, hand-delivery², or facsimile³. If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else to the address will delay the delivery of the response to the undersigned.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225⁴. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



Paul Shanowski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

1 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

2 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

3 (571) 273-8300- please note this is a central facsimile number.

4 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.